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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

PAUL C. HAMILTON,

Plaintiff and Appellant,

v.

J. SOUKUP, as Assistant Warden, etc., et al.,

Defendants and Respondents.

D056740

(Super. Ct. No. ECU04180)

APPEAL from a judgment of the Superior Court of Imperial County, Jeffrey B. Jones, Judge. Affirmed.

Paul C. Hamilton, a state prisoner, appeals from the trial court's order sustaining defendants' demurrer to his complaint alleging deliberate indifference to his need for outdoor exercise while the prison was on lockdown status.

As we will explain, we agree with Hamilton that the trial court erred in concluding that he had not exhausted his administrative remedies. However, we conclude that another ground for demurrer has merit, namely that Hamilton failed to comply with the

Government Claims Act (Gov. Code, § 810 et seq.).¹ Accordingly, we affirm the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

In January 2008, Hamilton filed a lawsuit against three employees at Centinela State Prison, where he was housed during the relevant time period. The complaint identified the defendants as "'C' Facility Captain McKinney," "Assistant Warden Hernandez" and "Assistant Warden J.M. Saukup."²

Hamilton pled a single cause of action for "deliberate indifference." Specifically, Hamilton alleged that due to a race riot in February 2007, the area of the prison in which he was housed was placed on lockdown status from February 22 to May 15, 2007, and he was not able to exercise outdoors during that time. Hamilton alleged that the lack of outdoor exercise caused his blood pressure to rise, and he suffered a mild stroke on June 4, 2007, leaving his legs in "critical condition[]." ³ Hamilton sought compensatory and punitive damages, each in the amount of \$1 million from every defendant.

¹ Unless otherwise indicated, all further statutory references are to the Government Code.

² Hamilton apparently misspelled the name of one defendant. Court documents filed by his attorney identify him as "J. Soukup."

³ At some point prior to suffering the stroke, Hamilton was transferred to a different prison.

For the purpose of establishing that he had exhausted his administrative remedies before filing the complaint, Hamilton alleged that on January 1, 2007 (at least one month prior to the race riot that caused the prison lockdown on February 22, 2007), he submitted an inmate appeal about the overcrowded conditions in the prison.⁴ In the appeal, which Hamilton attached to the complaint, he pointed to the overcrowded conditions in the prison and stated that when the tensions caused by that overcrowding "rise[] to the level of violence," he is "deprived of [his] basic human need in [*sic*] 'outdoor exercises.'" Hamilton explained that he has high blood pressure and that during lockdowns without outdoor exercise, his blood pressure rises to unhealthy levels. According to Hamilton's allegations, "[t]his is considered cruel and unusual punishment, a violation of the 8th Amendment because I could suffer a stroke at this blood pressure level." Hamilton discussed a riot in late November 2006, which resulted in a lockdown during which he could not exercise outdoors. Hamilton requested that prison officials "modify you[r] lockdown programs where people in my situation can have outdoor exercises" or transfer him to a prison that is not overcrowded.

Also attached to Hamilton's complaint was documentation of the outcome of his inmate appeal at several levels. At the first level, the prison "partially granted" the appeal on January 15, 2007, by stating that although Hamilton would not be permitted to exercise outdoors during lockdowns, he would be considered for a transfer to another

⁴ Hamilton presented the evidence of his inmate appeal as an attachment to his complaint, under a cover page which stated "Plaintiff's Exhaust[ion] of Administrative Remedies."

prison in his next annual review. On February 27, 2007, Hamilton's second level appeal was denied by the prison's warden, and on June 20, 2007, the Department of Corrections and Rehabilitation (the Department), denied Hamilton's third level appeal.

A further attachment to Hamilton's complaint was a government claim that he signed on July 9, 2007, and filled out on a form titled "Government Claim — Judicial Branch." The government claim stated that Hamilton had suffered a mild stroke on June 4, 2007, due to lack of outdoor exercise, and alleged a violation of Hamilton's right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

We assume that Hamilton intended the government claim to be directed against the State of California. However, the government claim does not so indicate, and it is improperly set forth on a form designed for claims made against the judicial branch. A notice on the bottom of the form states that it should be sent to the court executive officer at the Los Angeles County Superior Court. The record contains no evidence of where Hamilton sent the form.

Defendants Hernandez and Soukup ("Defendants") demurred to the complaint.⁵ Defendants argued that (1) Hamilton failed to exhaust his administrative remedies; (2) Hamilton failed to comply with the Government Claims Act; and (3) they are

⁵ Defendant McKinney was apparently never served with the complaint.

protected by the immunity for discretionary acts of public employees set forth in section 820.2.⁶

In opposition, Hamilton argued that he had exhausted his administrative remedies by going through the inmate appeal process, and he also argued that the Defendants' acts were not discretionary. Hamilton, did not, however, address the argument that he had failed to comply with the Government Claims Act.

The trial court sustained Defendants' demurrer without leave to amend, reaching only the first ground. Specifically, the trial court ruled that "Defendants' demurrer to plaintiff's complaint is sustained because plaintiff failed to exhaust administrative remedies before filing suit." Hamilton appeals from the judgment of dismissal.

II

DISCUSSION

A. *Standard of Review*

"On appeal from an order of dismissal after an order sustaining a demurrer, our standard of review is de novo, i.e., we exercise our independent judgment about whether the complaint states a cause of action as a matter of law.'" (*Los Altos El Granada Investors v. City of Capitola* (2006) 139 Cal.App.4th 629, 650.) In reviewing the

⁶ Section 820.2 states: "Except as otherwise provided by statute, a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused." (§ 820.2) "In determining whether an act of a public employee is discretionary under section 820.2, [the courts] have distinguished between the employee's operational and policy decisions." (*Barner v. Leeds* (2000) 24 Cal.4th 676, 685.)

complaint, "we must assume the truth of all facts properly pleaded by the plaintiffs, as well as those that are judicially noticeable." (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 814.) "A judgment of dismissal after a demurrer has been sustained without leave to amend will be affirmed if proper on any grounds stated in the demurrer, whether or not the court acted on that ground." (*Carman v. Alvord* (1982) 31 Cal.3d 318, 324 (*Carman*).)

B. *Hamilton Exhausted His Administrative Remedies*

Hamilton contends that the trial court erroneously concluded that he failed to exhaust his administrative remedies. As we will explain, we agree.

"Under state law, "exhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts."'" (*Wright v. State of California* (2004) 122 Cal.App.4th 659, 665.) "[I]nmates are required to exhaust administrative remedies, even when seeking money damages unavailable in the administrative process." (*Id.* at p. 668.)

The administrative remedies available to Hamilton are set forth in regulations promulgated by the Department. According to those regulations, "[a]ny inmate . . . under the [D]epartment's jurisdiction may appeal any departmental decision, action, condition, or policy which they can demonstrate as having an adverse effect upon their welfare. . . ." (Cal. Code Regs., tit. 15, § 3084.1, subd. (a).) Further, under the applicable regulations, an inmate appeal will be summarily rejected if it "concerns an anticipated action or decision." (Cal. Code Regs., tit. 15, § 3084.3, subd. (c)(3).)

Here, as we have explained, Hamilton filed an inmate appeal challenging the prison's policy of not allowing him to have outdoor exercise during the prison lockdowns

caused by overcrowded prison conditions. He alleged that the policy was having an adverse effect on his welfare because it raised his blood pressure, which, because of his medical condition, could lead to a stroke. Hamilton's lawsuit is based on the injury that Hamilton suffered as a result of the prison's policy.⁷ We cannot conceive of any other administrative remedy that Hamilton could have pursued to obtain relief from the condition that he alleges caused his injury.

We therefore reject Defendants' argument that Hamilton failed to exhaust his administrative remedies and we conclude that the trial court improperly sustained the demurrer on that basis.

C. *Hamilton Did Not Establish That He Complied with the Government Claims Act*

The second ground for demurrer advanced by Defendants was that Hamilton failed to establish his compliance with the Government Claims Act (§ 810 et seq.). Although the trial court did not rely on this ground for demurrer, we may affirm the trial court's order on any ground set forth in Defendants' demurrer. (*Carman, supra*, 31 Cal.3d at p. 324.) We therefore proceed to evaluate whether Hamilton complied with the Government Claims Act.

⁷ Defendants claim that Hamilton's inmate appeal would have been impermissibly anticipatory if it had covered the lockdown and injury that occurred months after he filed the appeal in January 2007, and thus should not be interpreted to cover the issues raised in the lawsuit. We disagree. The subject of Hamilton's January 2007 appeal was the same as the subject of his eventual lawsuit, namely the harmful impact on his health of the prison's policy against outdoor exercise during lockdowns. That policy existed during the entire time period. Indeed, the prison acknowledged the policy in its response to Hamilton's inmate appeal, noting that "[d]uring Lockdowns you cannot be sent out to exercise[;] this is to protect the safety and security of the institution."

The Government Claims Act "establishes certain conditions precedent to the filing of a lawsuit against a public entity. As relevant here, a plaintiff must timely file a claim for money or damages with the public entity. (§ 911.2.) The failure to do so bars the plaintiff from bringing suit against that entity. (§ 945.4.)" (*State of California v. Superior Court* (2004) 32 Cal.4th 1234, 1237.) When the State of California is the subject of a claim for monetary damages, the claim must be filed with the California Victim Compensation and Government Claims Board (the Board) by either delivering it to an office of the Board or mailing it to the Board's principal office. (§ 915, subd. (b).)

The same claim filing requirement applies in a suit for money damages against an employee of a public entity. Specifically, section 950.2 provides that, with certain exceptions not applicable here, "a cause of action against a public employee . . . for injury resulting from an act or omission in the scope of his employment as a public employee is barred if an action against the employing public entity for such injury is barred" under the statutory provisions in the Government Claims Act requiring the filing of claims with public entities. (§ 950.2.) Thus, when a plaintiff seeks monetary damages against employees of the State of California for acts within the scope of their employment, he must first file a claim with the Board.

Hamilton's complaint seeks money damages against Defendants, whom Hamilton alleges to be employees of the State of California. Further, the complaint alleges that it is based on acts or omissions within the scope of the Defendants' employment. Thus, Hamilton was required to file a claim with the Board before bringing suit by mailing or delivering the claim to the Board's offices. (§§ 915, subd. (b), 950.2.)

"[A] plaintiff must allege facts demonstrating or excusing compliance with the claim presentation requirement. Otherwise, his complaint is subject to a general demurrer for failure to state facts sufficient to constitute a cause of action." (*State of California v. Superior Court, supra*, 32 Cal.4th at p. 1243.) Hamilton's complaint does not allege facts demonstrating that he complied with the Government Claims Act by filing a claim with the Board. The text of Hamilton's complaint does not describe the filing of any claim with the Board. Although Hamilton attached a completed government claim form to his complaint, he submitted no evidence that the completed claim form was sent to the Board as required by section 915, subdivision (b).⁸ Because Hamilton has not pled or established by documents attached to the complaint that he filed a claim with the Board before he filed suit, his complaint fails to state facts sufficient to demonstrate compliance with the Government Claims Act and is subject to demurrer.

Where, as here, the trial court sustained the demurrer without leave to amend, "we must decide whether there is a reasonable possibility the plaintiff could cure the defect with an amendment. . . . If we find that an amendment could cure the defect, we conclude that the trial court abused its discretion and we reverse; if not, no abuse of discretion has occurred. . . . The plaintiff has the burden of proving that an amendment would cure the defect." (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081,

⁸ Indeed, as we have noted, the form used by Hamilton states that it should be sent to the court executive officer at the Los Angeles County Superior Court. The record contains no information about where, if anywhere, Hamilton sent the claim form.

citations omitted.) Here, Hamilton has made no attempt to show that he could amend the complaint to cure his failure to plead compliance with the Government Claims Act.⁹

DISPOSITION

The judgment is affirmed.

IRION, J.

WE CONCUR:

MCDONALD, Acting P. J.

O'ROURKE, J.

⁹ We note that Hamilton's opening appellate brief discusses the issue of whether Hamilton complied with the Government Claims Act. In this context, Hamilton invites the court to "view the claim itself . . . , [and] then decide for itself" whether Hamilton satisfied legal requirements. We have done so, and find no evidence that Hamilton sent the claim to the Board.